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09/842,610	04/26/2001	Peter H. Rogers	062004-1640	8626

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EXAMINER

BROWN, MICHAEL A

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 10/01/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/842,660

Applicant(s)

Peter Rogers

Examiner

Michael Brown

Group Art Unit

3764

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☐ Responsive to communication(s) filed on _____.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-30 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☒ Claim(s) 23 is/are allowed.
- ☒ Claim(s) 1-22 and 24-29 is/are rejected.
- ☒ Claim(s) 30 is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 7-9
- ☐ Interview Summary, PTO-413
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

Art Unit: 3764

Claim Rejections - 35 U.S.C. § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3 and 6-7 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Duykers.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duykers.

Duykers discloses in figures 1-4 a method of administering hydro-acoustic therapy to a patient, substantially as claimed. However, Duykers does not disclose the step of causing the frequency and an amplitude of the acoustic waves to vary as a function of time or what the volume of water mass is to the displaced mass of the lung of the patient. Duykers further discloses a controller 20 that is used to control the frequency and the amplitude of the acoustic wave. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the control device as disclosed by Duykers could be used to control the

Art Unit: 3764

frequency and amplitude of the acoustic waves as a function of time. The volume of the water could be controlled based on the amount of water inserted into the tank.

5. Claims 8-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duykers in view of Nedwell.

Duykers discloses in figures 1-8 a method for administering hydro-acoustic therapy to a patient, substantially as claimed. However, Duykers does not disclose the type of diseases or health problems that the device is used to eliminate. Duykers, does disclose that an acoustic vibration could be used to cause the mobilization of lung tissue (col. 4, lines 52-64). Nedwell teaches a method for administering hydro-acoustic therapy to a patient to eliminate cystic fibrosis. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the device as disclosed by Duykers and taught by Nedwell could be used to treat patient afflicted with cystic fibrosis, chronic lung disease, lung cancer or pneumonia because all these diseases affect the lungs. Duykers, also teaches using a hydrophone 62.

6. Claims 23-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duykers in view of Alton.

Duykers discloses in figures 1-8 an apparatus for administering hydro-acoustic therapy for a patient, substantially as claimed. However, Duykers does not disclose the chamber being rigid. Alton teaches in figures 1 chamber 12 that is rigid. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the chamber (14) as disclosed

Art Unit: 3764

by Duykers could be fabricated of a rigid material as taught by Alton in order to use a chamber that could hold large patient and large amounts of water.

7. Claims 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 27 above, and further in view of Nedwell.

Nedwell teaches in figure 8 an apparatus for administering hydro-acoustic therapy comprising a chamber 24 having an orifice (the orifice to recess 32), in a wall and a flexible membrane 42 covering the orifice. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the orifice in the wall, the membrane and the vibration means as taught by Nedwell could be substituted for the acoustic generator as disclosed by Duykers because both device are functionally equivalent. The membrane would provide vibration and keep the acoustic generator dry during the process.

Allowable Subject Matter

8. Claim 22 is allowed.

9. Claim 30 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 3764

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. No additional prior art, was found or cited during the first office action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is (703) 308-2682.

M. Brown
September 27, 2003

A handwritten signature in black ink, appearing to read "Michael A. Brown". The signature is fluid and cursive, with the first name "Michael" being the most prominent part.

Michael A. Brown
Primary Examiner